RECENT CASES

CRIMINAL PROCEDURE—BURGLARY INDICTMENT—OWNERSHIP OF GOODS.—PEOPLE V. MENDELSON ET AL., 106 N. E. (ILL.) 249.—*Held,* that a defendant is not placed in double jeopardy by two successive indictments for burglary relating to the same breaking and entry, if the second indictment alleges a different ownership of the subject matter of the intended larceny.

This holding presupposes that the first indictment could not have been sustained by the evidence required to support the second. This position might be maintained on the theory that the allegation of ownership, while not essential, yet, if made, must be proved as alleged. *Conn. v. Moore,* 130 Mass. 45. This doctrine, however, is not generally accepted. *Reg. v. Clarke,* 1 C. & K. 421; *Harris v. State,* 61 Miss. 304. And the principal case is rested rather upon the ground that the allegation itself is indispensable. Widely different rules have been applied to this question. Generally it is sufficient to allege in terms of the governing statute, if the statute sets forth the facts constituting the intended crime. *McRae v. Commonwealth,* 20 Ky. Law Rep. 1199. Sometimes this is sufficient even though, in designating the intent, the statute does not proceed beyond conclusions of law. *State v. Powell,* 61 Kan. 81. Several authorities, in accord with the principal case, hold that the owner of the goods must be specified. *Barnhart v. State,* 154 Ind. 177, and authorities there cited. This has been deemed so essential that variance as to the nature of the interest of the alleged owners has been held fatal. *State v. Ellison,* 53 N. H. 325 (joint-tenancy alleged, severalty proved). Most courts, however, refuse to apply so rigorous a rule. *Lamater v. State,* 38 Tex. Crim. Rep. 249 (ownership laid in janitor of school house). By the weight of authority the allegation of ownership need not be made. *Reg. v. Clarke,* 1 C. & K. 421; *Brown v. State,* 72 Miss. 990; *Commonwealth v. Wicker,* 9 Ky. Law Rep. 474. And if made, it may be treated as surplusage. *State v. Simpson,* 32 Nev. 138. Failure to make it would merely prevent the finding of larceny under the burglary indictment. *Bowen v. State,* 106 Ala. 178. This conclusion is supported by the obvious practical impossibility which the contrary rule would often impose upon the pleader. *Jones v. State,* 18 Fla. 889. Accordingly it is usual to require a relatively slight degree of specification in the averment of purely mental ingredients of crimes. *State v. Newberry,* 26 Iowa 467 (assault with intent to commit murder); *State v. Hughes,* 76 Mo. 323 (attempt to commit larceny); *McKee v. State,* 111 Ind. 378 (conspiracy to defraud). The minority doctrine seems an extreme application of the rule that omissions in pleading shall be construed in a sense most unfavorable to the pleader.

DUE PROCESS OF LAW—FALSE IMPRISONMENT—JUVENILE DELINQUENTS.—WEBER V. DOUST ET AL., 143 PAC. (WASH.) 148.—Under a statute prescribing the procedure for bringing juvenile delinquents before the juvenile court, *held,* that an officer summarily arresting an alleged delinquent

without information, complaint, or warrant, commits an unconstitutional deprivation of liberty without due process of law, and is liable in an action for false imprisonment. Crow, C. J., and Chadwick, J., *dissenting.*

The law has long permitted courts of chancery to assume custody over the person, for the purposes of friendly guardianship, by processes quite distinct from those requisite in criminal proceedings. *Wellesley v. Wellesley,* 2 Bligh. (N. S.) 124. Summary arrest, however, even for the most benevolent purposes, could be justified at common law by nothing short of immediate and urgent necessity. *Keleher v. Putnam,* 60 N. H. 30. Accordingly constitutional inhibitions against deprivation of liberty without due process of law, apply to protective detentions of the person, as well as to criminal arrests. *People v. Turner,* 55 Ill. 280; *Allgor v. N. J. State Hospital,* 80 N. J. Eq. 386. The legislature may, however, in the exercise of its long-recognized function of *parens patriae,* dispense with certain forms of procedure which are indispensable in criminal cases. *State v. Brown,* 50 Minn. 353; *Farnham v. Pierce,* 141 Mass. 203; *Commonwealth v. Fisher,* 213 Pa. 48; *State v. Linderholm,* 84 Kans. 603. But such legislation has sometimes heen held unconstitutional on the ground that it has assumed a punitive character. *State v. Ray,* 63 N. H. 406. Juvenile Delinquency Acts frequently authorize or contemplate a summary arrest preliminary to formal proceedings for commitment. N. Y. Penal Code, Sect. 291; Wis. P. S. 573 f. Such acts are generally upheld. *Mill v. Brown,* 31 Utah 473; *People v. N. Y. Catholic Protectory,* 19 Abbot N. C. (N. Y.) 142; *State v. Marmonget,* 111 La. 226. Contra, *Allgor v. N. J. State Hospital, supra.* As introducing novel modes of procedure unknown to the common law and derogatory of common law rights, these acts must be construed strictly. *Matter of Heery,* 51 Hun (N. Y.) 371; *People v. N. Y. Catholic Protectory, supra.* The principal case controverts none of the above authorities and is thoroughly in accord with well established principles of statutory construction.

GIFTS CAUSA MORTIS—REQUISITES.—DANZINGER V. SEAMAN'S BANK FOR SAVINGS, 86 MISC. REP. (N. Y.) 316.—*Held,* It is essential to the gift *causa mortis* of a savings bank account that there be an immediate existing apprehension of death, in contemplation of which the gift is made with a clearly expressed intention to give *in praesenti;* that the subject matter of the gift be delivered to the donee or some one for him; that the donor die from the existing ailment without revoking the gift.

There seems to be no doubt that a gift *causa mortis* must be made because there is an immediate existing apprehension of death. *Catherine Driscoll, Admx. v. Mary Driscoll,* 143 Cal. 528; *Taylor v. Harrinson,* 179 Ill. 137; *Northwestern Life Ins. Co. v. Collamore,* 100 Mo. 578. And it must be in contemplation of that apprehension of death that the gift is made. *Nogga v. Bank of Ansonia,* 79 Conn. 425; *Dickeschied v. Exchange Bank,* 28 W. Va. 340. It must be made with a clearly expressed intention to give *in praesenti. Baker v. Moran,* 136 Pac. (Ore.) 30; *Hecht v. Shaffer,* 15 Wyo. 34. There is no end of authority that the subject matter of the